



ADVISORY OPINION 07-08

Interpretation of T.C.A. § 3-6-305,
with respect to whether state officials,
when serving as a member of a government
official professional association, may solicit
contributions from employers of lobbyists.

INTRODUCTION:

The following Advisory Opinion is in response to a written inquiry from Mr. Gerry Boaz, on behalf of the Association of Government Accountants (“AGA”), as to whether the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”) permits state officials, when serving in their capacity as members of AGA, to solicit contributions from local businesses which may be employers of lobbyists.

Mr. Boaz asks the following questions:

(1) Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector members? Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? What types of fund raising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

(2) Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for purchasing a service offered from the AGA, such as advertising on the AGA’s website or in its newsletter or brochures?

(3) Are state officials permitted to use their state e-mail accounts when acting as AGA committee members and engaging in AGA fundraising?

(4) Does the Act place limits upon the value of items that might be included in conference “goodie bags”, or items that might be donated for sale in a silent auction?

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

(1) The AGA may establish a corporate sponsorship committee to solicit contributions from local businesses. However, state officials, on behalf of AGA, may not solicit employers of lobbyists.¹ In addition, state officials should not serve on a committee which is responsible for choosing businesses for solicitation.

¹The restrictions on solicitations of employers of lobbyists would equally apply to solicitations of lobbyists.

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 07-08

September 27, 2007

Page 2 of 4

(2) An AGA corporate sponsorship committee may solicit local businesses, including employers of lobbyists, to purchase a service from AGA for the fair market value of the service, and state officials may serve on such a committee.

(3) Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee's appointing authority.

(4) Gifts provided by employers of lobbyists to state officials are prohibited, regardless of value, unless the item being donated for the "goodie bag" or silent auction falls within one of the exceptions listed in T.C.A. § 3-6-305(b).

BACKGROUND:

AGA is a non-profit § 501(c)(3) organization comprised of government financial professionals such as auditors, accountants, budget analysts, chief financial officers, information systems managers, finance directors, inspectors general, professors and students. Most of its members are state officials. Additionally, state officials have received permission from their respective agencies to serve as Chapter Executive Committee members.

Most national AGA chapters have fundraising activities. In 2006, the AGA solicited funds from private businesses to be corporate sponsors for the Southeastern Professional Development Conference, a regional event. AGA wants to start a corporate sponsorship committee to solicit contributions from local businesses to benefit all members of AGA. The AGA plans to host a conference in 2008. As a part of conference participation, attendees will be given a conference "goodie bag." AGA would also like to conduct a silent auction.

DISCUSSION:

A. SOLICITATION OF CORPORATE SPONSORSHIPS BY STATE OFFICIALS

Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector members? Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? What types of fund raising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

T.C.A. § 3-6-305(a)(2) states: A candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family of such candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.²

² For a complete list of exceptions, see T.C.A. § 3-6-301(11) and § 3-6-305(b). It does not appear that any exception applies under the facts provided in this question.

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 07-08

September 27, 2007

Page 3 of 4

According to the facts provided, members of the AGA want to solicit contributions from local businesses in an effort to raise funds on behalf of AGA to sponsor its events. The statute prohibits state officials from soliciting businesses which are employers of lobbyists. State officials are permitted to solicit sponsorships from businesses that are not employers of lobbyists.

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending on the organization or association. An organization such as the AGA, however, is an established and recognized professional organization for government employees and most of its members are, in fact, state employees. Accordingly, it is difficult, if not impossible, for the state official, acting on behalf of AGA, to be seen as performing a role separate from his or her status as a state employee when soliciting contributions from employers of lobbyists. Therefore, those members of AGA who are state officials are prohibited from directly soliciting businesses and organizations that are employers of lobbyists. In addition, in order to prevent such state employees from being in the position to choose businesses for solicitation, any committee organized by the AGA for the purposes of soliciting businesses, should not include members who are state officials.

B. SALES OF AGA SERVICES TO CORPORATE SPONSORS

Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for purchasing a service offered from the AGA, such as advertising on the AGA's website or in its newsletter or brochures?

There is no restriction on the AGA offering to sell goods or services to local businesses for value. If the AGA sells goods or services for fair market value, the payment received from the local business is not a "gift" under T.C.A. § 3-6-301(11) and the gift restrictions of T.C.A. § 3-6-305 do not apply. Therefore, a government official who serves on the corporate sponsorship committee may contact businesses in order to sell AGA goods or services for fair market value.

C. USE OF STATE E-MAIL BY STATE OFFICIALS

Does the Act permit state officials to use their state e-mail accounts when acting as AGA committee members and engaging in fundraising for the AGA?

Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee's appointing authority.

D. VALUE LIMITS ON CONTRIBUTIONS OF TANGIBLE ITEMS

Are there limits upon the value of items that might be included in conference "goodie bags", or items that might be donated for sale in a silent auction?

Any item that is considered a gift for the purposes of T.C.A. § 3-6-305(a)(2) is prohibited, regardless of its value. Thus, although an item may be considered inexpensive, state employees may not solicit or accept the item from an employer of a lobbyist unless it falls within one of the gift ban exceptions contained in T.C.A. § 3-6-305(b). Many of the items commonly found in "goodie bags" and commonly contributed toward silent auctions will fall within one of the exceptions contained in this subsection. For example,

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 07-08

September 27, 2007

Page 4 of 4

T.C.A. § 3-6-305(b)(2) provides an exception for informational materials in the form of books, audiotapes, etc. T.C.A. § 3-6-305(b)(4) contains an exception for sample materials, promotional items and appreciation tokens that are routinely given to customers, suppliers, or potential customers in the ordinary course of business. In addition, T.C.A. § 3-6-305(b)(6)(A) provides an exception for discounts that are provided to the general public or specified groups or occupations in the ordinary course of business.

Accordingly, each item proposed for donation should be analyzed to determine whether it falls within one of the exceptions contained in T.C.A. § 3-6-305(b). If included within one of the exceptions, the item can be included in a “goodie bag” or donated for a silent auction, and there is no specific limit on the value of such items.

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